

JOSH STEIN
ATTORNEY GENERAL



REPLY TO:
CHRISTOPHER R. MCLENNAN
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CMCLENAN@NCDOJ.GOV

January 16, 2020

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Dirk O. Fromman
Aero-Tech Helicopters, LLC
P. O. Box 120
Kingstree, SC 29556

Re: IR2018-027

Dear Mr. Fromman:

Enclosed for your files is a copy of the Settlement Agreement which was approved by the Pesticide Board on January 14, 2020. If you have not already done so, please remit your \$1,800.00 as soon as possible. Per the terms of the settlement agreement, payment is due within 30 days from the Board's approval. The check should be made payable to the North Carolina Department of Agriculture and Consumer Services, with the file number listed on the reference line above printed on it. Please mail the check to this address:

J. Patrick Jones
Deputy Director of Pesticide Programs
North Carolina Department of Agriculture and Consumer Services
Structural Pest Control and Pesticides Division
1090 Mail Service Center
Raleigh, NC 27699-1090

Thank you for your cooperation in this matter.

Sincerely,

Christopher R. McLennan
Assistant Attorney General

CRM/vgm
Enclosures
cc: J. Patrick Jones

BEFORE THE NORTH CAROLINA

PESTICIDE BOARD

File No. IR2018-027

NORTH CAROLINA DEPARTMENT OF
AGRICULTURE AND CONSUMER
SERVICES, STRUCTURAL PEST
CONTROL AND PESTICIDES DIVISION.

Complainant,

γ .

DIRK O. FROMMANN,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Dirk O. Frommann, Respondent.

1. At all times pertinent to this matter, Respondent was the owner and operator of Aero-Tech Helicopters, and held Aerial Applicator (Pilot) License No. 028-745 and Aerial Applicator (contractor) License No. 027-802.
2. On June 1, 2018, Complainant's North Carolina Pesticide Inspector Charles Clark investigated a complaint from Mrs. Sylvia Young and Mr. John Young on Prospect Church Road, Cleveland County, North Carolina, regarding an aerial pesticide application on June 1, 2018, which was intended for a tomato field across the street from the Young's residence.
3. Mrs. Young reported that a mist fell on her and her property while she was cutting grass and that she noticed the helicopter across the street flying over the tomato field spraying the field. The helicopter performing the pesticide application made several passes over the field close to her home. Mrs. Young stated that she never felt sick after the exposure and she did not seek medical attention.
4. On June 2, 2018, Mrs. Young showed Complainant's Inspector where she was when she felt the mist from the application. Complainant's Inspector obtained samples from the vegetation on the Young's property located at a rose bush on the driveway and located 15 feet from the pavement edge, a cedar tree located in front yard 41 feet from the pavement edge. Complainant's Inspector Clark noted that the Young's pickup truck was parked under an open shed approximately 108 feet from the paved road and had what appeared to be spray pattern on the

tailgate. A sample was obtained toward the tomato field and collected before entering the actual tomato crop. This sample consisted of soil taken 15 feet from pavement edge toward tomatoes.

5. Complainant's Inspector also interviewed Mr. Justin Bass, who owns property beside the tomato field and across the road from the Young's property. Mr. Bass' wife was at home during the aerial application, but did not notice any mist or odors. She stated that they were mostly inside. Mr. Bass did not wish to have sampling completed but allowed measurements from the corner of his foundation to the tomato field. Measure was taken 5 feet into planted rows. This distance was 71 feet. At this point in the tomato field Complainant's Inspector collected two additional samples.

6. Complainant's Inspector Clark contacted Charles Jones, operator of Charles Jones Produce, who farms the tomato field across from the Young's property. Mr. Jones indicated that he hired Aero-Tech Helicopters to treat the tomato field due to the wet weather and field being so wet.

7. Complainant's Inspector interviewed Respondent, the aerial applicator who made the application to Mr. Jones' field at issues. Respondent stated that he had seen Mrs. Young in the yard mowing, but claimed he did not spray over her. Respondent provided Complainant's Inspector with spray records as well as files showing the spray swaths over the field. Respondent further stated his helicopter had been inspected for North Carolina this year but he did not provide photo or inspection number.

8. During the inspection, Complainant's Inspector determined the following pesticide applications were made:

On May 27, 2018, Mr. Jones applied Mustang Max-Cypermethrin, Bravo-Chlorthalonil, Champ-Copper, and Pencozeb-ETU Mancozeb(magnesium and Zinc);

On June 1, 2018, Respondent applied Mustang Max-Cypermethrin, Bravo-Chlorthalonil, Champ-Copper, and Pencozeb-ETU Mancozeb (magnesium and Zinc);

On June 1, 2018, Respondent also applied Hero-Cypermethrin and bifenthrin, Bravo- Chlorthalonil, Champ-Copper, Pencozeb-ETU Mancozeb(magnesium and Zinc).

9. During the inspection, Complainant's Inspector determined the following pesticide were involved:

MUSTANG MAX, EPA Reg. No. 279-3249 cypermethrin, Class II Warning;

HERO, EPA Reg. No. 279-3315 cypermethrin, bifenthrin, Class III Caution;

BRAVO, EPA Reg. No. 50534-188-100 chlorothalonil, Class III Caution;

CHAMP, EPA Reg. No. 55146-57 copper hydroxide, Class I Danger; and

PENNCOZEB, EPA Reg. No. 70506-185 mancozeb, Class III Caution.

10. Laboratory analysis of the samples obtained during the investigation revealed as follows:

Sample No	Type	Location	Dimethoate	ETU	Chlorthalonil	Bifenthrin	Z cypermethrin
CC-008	Soil	Young	2.21ppb	ND	5.81ppm	ND	ND
CC-009	Soil	Young	ND	ND	0.054ppm	0.150ppm	ND
CC-010	Veg	Young	1.40ppb	ND	2.44ppm	ND	ND
CC-011	Soil	ROW	ND	BQL	0.834ppm	ND	ND
CC-012	Soil	Jones	ND	0.017ppm	1.73ppm	ND	ND
CC-013	Veg	Jones	0.920ppb	ND	21.1ppm	ND	ND

Notably, CC-09 (which was taken within 100 feet from the Young house, detected bifenthrin. Additionally, CC-11 (which was taken 15 feet from the state road) detected chlorthalonil.

11. The registered labels for the pesticides used during the aerial application contain the following language:

Bravo:

“Do not apply this product in a way that will contact workers or other persons, or pets, either directly or through drift. Only protected handlers may be in the area during application.”

Hero:

“Do not apply this product in a way that will contact workers or other persons, either directly or through drift.”

12. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-456(a)(2), (4) and (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .1005(c), (e) and (f)

No pesticide shall be deposited by aircraft on the right-of-way of a public road or within 25 feet of the road, whichever is the greater distance.

No pesticide shall be deposited within 100 feet of any residence.

No pesticide shall be deposited onto any non-target area in such a manner that it is more likely than not that adverse effect will occur.

13. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty, which may be assessed by the Board as follows:

N.C.G.S. §143-469(b)

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

14. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Eight Hundred Dollars (\$1,800.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Eight Hundred Dollars (\$1,800.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Eight Hundred Dollars (\$1,800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
 - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 14(c) and waives said right by consenting to the terms of this Agreement.

- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 14(c) of this Agreement.
- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

15. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

16. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

17. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

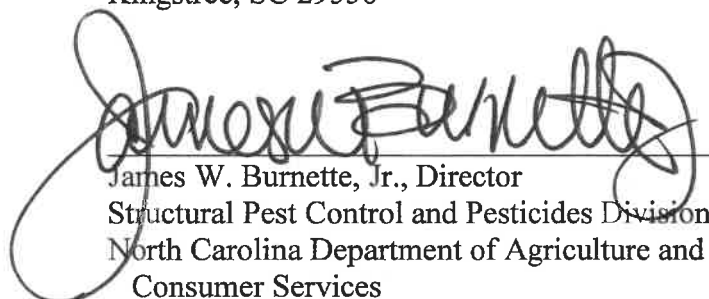
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:




Mr. Dirk O. Fromman
Aero-Tech Helicopters, LLC.
P. O. Box 120
Kingstree, SC 29556

11.1.19
Date


James W. Burnette, Jr., Director
Structural Pest Control and Pesticides Division
North Carolina Department of Agriculture and
Consumer Services
1090 Mail Service Center
Raleigh, North Carolina 27699-1090

12/5/2019
Date


Christopher R. McLennan
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629

12/11/19
Date

APPROVED AND ORDERED FILED,

this the 14th day of January, 2020.

NORTH CAROLINA PESTICIDE BOARD

BY:


Chairman

